Supreme Court, U.S
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No. 10-783

In the Supreme Court of the United States

ROSENDO BENITO RANGEL-PEREZ, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that, under 8 U.S.C. 1252(a)(2)(B)(i), it lacked jurisdiction to review the Board of Immigration Appeals' determination that petitioner failed to demonstrate that his removal would result in "exceptional and extremely unusual hardship" to qualifying United States citizen family members, a prerequisite to be eligible for discretionary cancellation of removal under 8 U.S.C. 1229b(b).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is unreported. The opinions of the Board of Immigration Appeals (Pet. App. 5a-8a) and the immigration judge (Pet. App. 9a-30a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 10, 2010. The petition for a writ of certiorari was filed on December 9, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, the Attorney General, in his discretion, may cancel the removal of an alien who is

found to be removable. 8 U.S.C. 1229b.[1] The discretion of the Attorney General to grant relief from removal is akin to "a judge's power to suspend the execution of a sentence, or the President's to pardon a convict." *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (citation omitted). To obtain cancellation of removal, the alien must demonstrate both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. See, *e.g.*, *Guled* v. *Mukasey*, 515 F.3d 872, 879-880 (8th Cir. 2008). The alien bears the burden of proving eligibility for cancellation of removal. 8 U.S.C. 1229a(c)(4)(A)(i); 8 C.F.R. 1240.8(d).

To demonstrate statutory eligibility for cancellation of removal, an alien who is not a lawful permanent resident must show that he has been physically present in the United States for a continuous period of at least ten years; that he has been a person of good moral character during that period; that he has not been convicted of certain listed crimes; and (as particularly relevant here) "that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1229b(b)(1). To demonstrate "exceptional and extremely unusual hardship," the alien must show that the hardship to his qualifying relatives is "substantially beyond the ordinary hardship that would be expected when a close family member leaves this country." *In re Monreal*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001) (internal quotation marks omitted).

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[1] All references to 8 U.S.C. 1229b are to the 2006 version of the United States Code, as amended by the 2009 Supplement.

b. Since 1996, the INA has barred judicial review of specified discretionary decisions made by the Attorney General or his designees in immigration cases. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 306, 110 Stat. 3009-607. As pertinent here, the INA provides:

> [N]o court shall have jurisdiction to review * * * any judgment regarding the granting of relief under section * * * 1229b [the INA's cancellation of removal provision].

8 U.S.C. 1252(a)(2)(B)(i).

In 2005, Congress qualified this jurisdictional bar by providing:

> Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

8 U.S.C. 1252(a)(2)(D), as added by the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, § 106(a)(1)(A)(iii), 119 Stat. 310.

2. Petitioner is a native and citizen of Mexico. Pet. App. 11a. He entered the United States illegally in May 1997. *Ibid.* Petitioner's wife remained in Mexico with their four children. *Id.* at 12a, 15a. Petitioner settled in Naples, Florida, and began living with Ana Roque, a naturalized U.S. citizen, and Roque's son, who is also a U.S. citizen. *Ibid.* Petitioner then divorced his wife and married Roque. *Ibid.*

In September 2007, petitioner was arrested on twenty-one felony counts of illegally selling prescription drugs. Administrative Record (A.R.) 1358-1364, 1372-1377. Petitioner agreed to plead guilty and was convicted on three felony counts and sentenced to 166 days of imprisonment. A.R. 1388-1395.

United States Immigration and Customs Enforcement (ICE) initiated removal proceedings against petitioner. Petitioner was charged with being removable on four grounds: (1) as an alien present in the United States without being admitted or paroled, see 8 U.S.C. 1182(a)(6)(A)(i); (2) as an immigrant who, at the time of application for admission, is not in possession of a valid entry document, see 8 U.S.C. 1182(a)(7)(A)(i)(I); (3) as an alien who has been convicted of violating controlled substance laws, see 8 U.S.C. 1182(a)(2)(A)(i)(II); and (4) as an alien convicted of a crime involving moral turpitude, see 8 U.S.C. 1182(a)(2)(A)(i)(I). A.R. 2208-2210, 2211-2212.

Before an immigration judge (IJ), petitioner conceded that he was removable on the first two charges but denied the third and fourth charges. Pet. App. 11a. He also applied for cancellation of removal under 8 U.S.C. 1229b(b)(1). Pet. App. 10a.

The IJ found petitioner removable and denied his application for cancellation of removal. Pet. App. 9a-30a. The IJ determined that petitioner was removable on the first two charges (regarding his illegal presence), but not the third and fourth charges (regarding his drug convictions). *Id.* at 11a, 30a. The IJ then determined that petitioner was not eligible for cancellation of removal because he failed to show that his removal would cause exceptional and extremely unusual hardship to his U.S. citizen wife or stepson, as is required by 8 U.S.C.

1229b(b)(1)(D). Pet. App. 26a-29a. The IJ noted that petitioner was required to show not only that his removal would result in hardship to qualifying family members, but that "his qualifying relatives[] 'would suffer hardship that is substantially different from, or beyond that which would normally be expected from the deportation of an alien with close family members here.'" *Id.* at 26a (quoting *In re Monreal*, 23 I. & N. Dec. at 65).

The IJ determined that petitioner's removal would pose no financial hardship to his wife or stepson. Pet. App. 26a-27a. The IJ explained that petitioner's wife "owns a business, in which she earns in excess of $300,000 per year," that "she pays all the bills," and that "[i]t is clear that [petitioner] does not support his wife or [stepson]." *Ibid.* The IJ observed that petitioner "has nothing to do with the operation of [his wife's] business" and that petitioner's removal would cause "absolutely no financial hardship" to his wife. *Id.* a 28a. Petitioner contended that his removal would cause hardship to his children in Mexico, because he would no longer be able to send them money from his job in the United States, but the IJ explained that those children are not qualifying relatives. *Id.* at 27a; see 8 U.S.C. 1229b(b)(1)(D) (removal must cause exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child).

The IJ then concluded that other factors petitioner relied on to show exceptional and extremely unusual hardship were insufficient. Pet. App. 27a-29a. The IJ found that petitioner and his wife "have been married for only two years," and his wife "is doing well at the present time both physically[] and financially." *Id.* at 28a. The IJ noted that although petitioner's wife previ-

ously had cancer, she is in remission and the only medical attention she requires is a check-up once a year. *Id.* at 27a. And the IJ determined that whatever emotional harm petitioner's wife and stepson might suffer as a result of his removal was no more than the normal emotional hardship experienced whenever an alien relative is removed. *Id.* at 28a.

In the alternative, the IJ held that even if petitioner had established the requisite hardship, and therefore was eligible for cancellation of removal, he did not merit relief as a matter of discretion. Pet. App. 28a-30a. The IJ determined that petitioner's testimony was not credible. *Id.* at 28a-29a. Giving specific examples, the IJ found that petitioner's testimony conflicted with that of his witnesses, particularly his wife and his stepson. *Id.* at 29a. The IJ also determined that petitioner's criminal convictions for illegal sale of prescription drugs "show[] his disregard for the laws of this country" and thus weigh against petitioner when considering a discretionary grant of relief. *Id.* at 29a-30a. And the IJ noted that petitioner brought his Mexican children to live with him in Florida for several months illegally, which likewise showed a disrespect for the laws of this country. *Ibid.* Finally, the IJ noted that petitioner "owns no property" in the United States, "his employment is spotty, and he has done nothing to support the community." *Id.* at 30a. The IJ concluded that petitioner's negative factors outweighed his positive equities, and the IJ therefore denied cancellation of removal as a matter of discretion.

3. The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 5a-8a. The Board noted that petitioner did not contest the IJ's adverse credibility finding, and determined that the record sup-

ported that finding in any event. *Id.* at 7a n.2. The Board then upheld the IJ's determination that petitioner failed to demonstrate that his removal would result in exceptional and extremely unusual hardship to his wife and stepson. *Id.* at 7a-8a. The Board explained that "the record does not reflect that" any hardship petitioner's wife or stepson would experience "rises to the exceptional and extremely unusual level required for cancellation of removal." *Id.* at 7a (citing various portions of testimony). The Board found "simply no evidence * * * [that] the hardship the [petitioner's] family would suffer is distinguishable from that which would ordinarily be expected." *Id.* at 7a-8a.

4. The court of appeals dismissed petitioner's petition for review in an unpublished, per curiam order. Pet. App. 1a-4a. The court explained (*id.* at 2a) that Congress "limit[ed] [the federal courts'] jurisdiction over denials of discretionary relief in immigration proceedings" in 8 U.S.C. 1252(a)(2)(B)(i), which provides that "no court shall have jurisdiction to review . . . any judgment regarding the granting of relief under" 8 U.S.C. 1229b, the cancellation of removal provision. The court further explained that it had previously held that the "exceptional and extremely unusual hardship" determination under 8 U.S.C. 1229b(b)(1)(D) "is a discretionary decision not subject to review." Pet. App. 3a (citing *Martinez* v. *United States Att'y Gen.*, 446 F.3d 1219, 1221 (11th Cir. 2006)).

The court noted that although 8 U.S.C. 1252(a)(2)(D) nonetheless permits judicial review over "constitutional claims or questions of law," in this case, petitioner's claim was not a legal or constitutional one, but a challenge to the Board's discretionary determination that he had not shown the requisite hardship. Pet. App. 3a-4a.

The court reasoned that petitioner was "effectively asking [it] to reevaluate the evidence presented to the IJ" and "to review whether the [Board's] hardship decision was correct," and it concluded that petitioner's "argument is exactly the sort of abuse of discretion argument that [the court] do[es] not have jurisdiction to consider." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 5-16) that the court of appeals erred in holding that it lacked jurisdiction under 8 U.S.C. 1252(a)(2)(B)(i) to review the Board's denial of the discretionary relief of cancellation of removal. The court of appeals' decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Moreover, this case would present a poor vehicle to consider the question presented because even if there were jurisdiction, petitioner's claim would fail because he has not established the requisite hardship or good moral character and because he would be denied cancellation of removal in the exercise of discretion. Further review of petitioner's fact-bound claim is therefore unwarranted.

1. The court of appeals correctly concluded that it lacked jurisdiction to review petitioner's challenge to the Board's decision that he failed to demonstrate exceptional and extremely unusual hardship. The INA provides that no court shall have jurisdiction to review "any judgment regarding the granting of relief under section * * * 1229b * * * of this title." 8 U.S.C. 1252(a)(2)(B)(i). The relief that petitioner sought, discretionary cancellation of removal, is relief under Section 1229b, and his argument on appeal was that the Board erred in denying him that relief based on a "com-

pletely false assessment" of the underlying facts. Pet. C.A. Br. 38; see Pet. App. 3a. The court of appeals correctly concluded that it lacked jurisdiction to consider that claim under Section 1252(a)(2)(B)(i).

The court of appeals also correctly concluded that petitioner's claim does not fall within the statutory exception permitting federal-court review of "constitutional claims or questions of law." 8 U.S.C. 1252(a)(2)(D). As petitioner himself recognizes (Pet. 9), cancellation of removal is discretionary, and whether an applicant has met his burden of demonstrating that cancellation is justified depends on the facts of his individual case. See *In re C-V-T-*, 22 I. & N. Dec. 7, 10-12 (B.I.A. 1998); *In re Marin*, 16 I. & N. Dec. 581, 584-585 (B.I.A. 1978). That hardship determination is "precisely the discretionary determination that Congress shielded from [federal-court] review." *Meraz-Reyes* v. *Gonzales*, 436 F.3d 842, 843 (8th Cir. 2006). Petitioner's disagreement with the IJ's and Board's application of settled precedent to the facts of his case does not raise a "constitutional claim" or a "question of law." Instead, his claim is no more than a challenge to the exercise of the Board's broad discretion, and "challenges to the exercise of routine discretion * * * do not raise 'constitutional claims or questions of law.'" *De La Vega* v. *Gonzales*, 436 F.3d 141, 146 (2d Cir. 2006).

Although petitioner attempted to recast his claim as one raising constitutional or legal questions by asserting that the Board rendered its hardship decision based on "egregiously irrational factual determinations that rise to the level of a due process violation," Pet. C.A. Br. 25, the court of appeals correctly recognized that the claim was, in fact, nothing more than a challenge to the Board's discretionary decision. There is no dispute in

this case about the operative legal standard, compare Pet. 7-9 with Pet. App. 26a; petitioner simply disagrees with the Board's conclusion, after weighing the evidence and evaluating the relevant factors, that he had not met his burden of proving that his removal would cause his wife and stepson exceptional and extremely unusual hardship. As the court of appeals explained, petitioner "[wa]s effectively asking [the court] to reevaluate the evidence" about hardship his wife would suffer if he was removed, and that "is exactly the sort of abuse of discretion argument [the courts] do not have jurisdiction to consider." Pet. App. 3a-4a. Petitioner's passing invocation of the Due Process Clause does not change the nature of his claim, which amounts on this record to nothing more than a challenge to the Board's exercise of its discretion.[2]

Indeed, if petitioner's challenge to the Board's exercise of its statutorily conferred discretion were consid-

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[2] The court of appeals correctly concluded that petitioner did not raise any "colorable constitutional issue." Pet. App. 4a. He contended that the Board relied on a "false assessment" of the facts in his case (Pet. C.A. Br. 38), and then relied upon criminal cases in which defendants had been sentenced based on false information (*id.* at 34-36). Those cases are inapposite, because neither petitioner's disagreement with the agency's weighing of the evidence nor his disagreement with the agency's adverse credibility finding make its conclusion "false." Moreover, petitioner has no due process right to a grant of discretionary cancellation of removal, and due process guarantees that a certain process be followed, not that a certain outcome be reached. *E.g., In re Real Estate Title & Settlement Servs. Antitrust Litig.*, 869 F.2d 760, 768 (3d Cir.) ("[P]rocedural due process does not protect litigants from any particular outcome; instead it protects litigants from arbitrary denials of rights."), cert. denied, 493 U.S. 821 (1989); see also *Tovar-Landin* v. *Ashcroft*, 361 F.3d 1164, 1167 (9th Cir. 2004) ("[A]liens have no fundamental right to discretionary relief from removal for purposes of due process and equal protection.").

ered a "constitutional claim[] or question[] of law" under section 1252(a)(2)(D), that phrase would lose all meaning, as would section 1252(a)(2)(B)(i)'s jurisdictional bar. See, *e.g.*, *Higuit* v. *Gonzales*, 433 F.3d 417, 420 (4th Cir.) ("We are not free to convert every immigration case into a question of law, and thereby undermine Congress's decision to grant limited jurisdiction over matters committed in the first instance to the sound discretion of the Executive."), cert. denied, 548 U.S. 906 (2006); *Jarbough* v. *Attorney Gen.*, 483 F.3d 184, 189 (3d Cir. 2007) (federal courts are not bound by the label attached by party to characterize a claim and will analyze the substance of the claim to determine reviewability under section 1252(a)(2), because "[t]o do otherwise would elevate form over substance and would put a premium on artful labeling"). The court of appeals correctly held that it lacked jurisdiction over petitioner's claim.[3]

2. Contrary to petitioner's assertion (Pet. 9-16), the court of appeals' decision in this case does not conflict with decisions of other circuits. As an initial matter, the decision below is unpublished and non-precedential, and it therefore cannot give rise to the type of conflict in published decisions in the courts of appeals that would warrant this Court's review.

In any event, every court of appeals to consider the question has held that hardship determinations under

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[3] Petitioner also suggests in passing (Pet. 15-16) that the court of appeals erred by failing to address the IJ's negative credibility determination. There was no error, because that determination is only relevant to the question whether petitioner showed the requisite hardship, and the court of appeals correctly determined that it lacked jurisdiction to consider that claim. In any event, the adverse credibility finding is amply supported by the inconsistencies in petitioner's testimony. See Pet. App. 28a-29a.

8 U.S.C. 1229b are discretionary judgments made unreviewable under 8 U.S.C. 1252(a)(2)(B)(i), except to the extent that they raise colorable constitutional claims or genuine questions of law under 8 U.S.C. 1252(a)(2)(D). See, *e.g.*, *Arambula-Medina* v. *Holder*, 572 F.3d 824, 828 (10th Cir. 2009), cert. denied, 130 S. Ct. 2092 (2010); *Aburto-Rocha* v. *Mukasey*, 535 F.3d 500, 502-503 (6th Cir. 2008); *Barco-Sandoval* v. *Gonzales*, 516 F.3d 35, 38-39 (2d Cir. 2008); *Zacarias-Velasquez* v. *Mukasey*, 509 F.3d 429, 434 (8th Cir. 2007); *Martinez* v. *United States Att'y Gen.*, 446 F.3d 1219, 1222-1223 (11th Cir. 2006); *Bencosme de Rodriguez* v. *Gonzales*, 433 F.3d 163, 164 (1st Cir. 2005); *Obioha* v. *Gonzales*, 431 F.3d 400, 405 (4th Cir. 2005); *Martinez-Rosas* v. *Gonzales*, 424 F.3d 926, 929-930 (9th Cir. 2005); *Rueda* v. *Ashcroft*, 380 F.3d 831, 831 (5th Cir. 2004); *Leyva* v. *Ashcroft*, 380 F.3d 303, 305-306 (7th Cir. 2004); *Mendez-Moranchel* v. *Ashcroft*, 338 F.3d 176, 179 (3d Cir. 2003). Indeed, petitioner acknowledges that "every circuit court has held that in at least certain instances, the determination whether an alien has met his or her burden to establish the requisite hardship is considered a discretionary determination outside of a circuit court's jurisdiction to review." Pet. 9-10.

Petitioner cites cases (Pet. 10-11) in which various courts of appeals have found that certain legal and constitutional claims are reviewable. None of those decisions found a claim like petitioner's reviewable; the cited cases all address claims that are different from the one here. For example, some address whether certain crimes make an alien ineligible for cancellation of removal under 8 U.S.C. 1229b(a)(3) or (b)(1)(C), which is a legal issue that turns on the language of the relevant

statute.[4] Another case addresses whether a law could be applied retroactively,[5] a quintessentially legal issue. In other cited cases, the courts decided legal claims, but they did not specifically address jurisdiction under Section 1252(a)(2)(D).[6]

Petitioner also cites decisions in which an alien alleged that the Board used a substantively incorrect legal standard in making a hardship determination; the courts determined that those claims presented questions of law because they involved the interpretation of a statute

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[4] See *Garcia* v. *Holder*, 584 F 3d 1288, 1289 n 2 (10th Cir. 2009), *Castillo-Cruz* v. *Holder*, 581 F.3d 1154, 1157 (9th Cir 2009); *Mejia-Rodriguez* v. *Holder*, 558 F.3d 46 (1st Cir. 2009); *Rodriguez* v. *Gonzales*, 451 F.3d 60, 63-65 (2d Cir 2006), see also *Vasquez-Martinez* v. *Holder*, 564 F.3d 712, 717-719 (5th Cir. 2009) (addressing whether certain crime is an aggravated felony rendering alien ineligible for relief from removal); *Mbea* v. *Gonzales*, 482 F.3d 276, 278 n.1 (4th Cir. 2007) (same); *Sepulveda* v. *Gonzales*, 407 F.3d 59, 63-64 (2d Cir. 2005) (addressing nondiscretionary legal issues regarding whether alien was eligible for cancellation of removal).

[5] See *Obi* v. *Holder*, 558 F 3d 609, 612 (7th Cir. 2009).

[6] Petitioner cites (Pet. 11) *Augustin* v. *Attorney Gen.*, 520 F.3d 264 (3d Cir. 2008). In that case, the court decided the legal question whether the cancellation of removal statute allows imputation of a parent's years of continuous residence to his son for purposes of establishing the requisite continuous residence, *id* at 267-272, but it did not address the scope of Section 1252(a)(2)(D)'s exception for constitutional claims and questions of law. Similarly, in *Singh* v. *Gonzales*, 451 F.3d 400 (6th Cir 2006) (cited at Pet. 11), the court of appeals addressed another statutory interpretation issue—whether the cancellation statute allows imputation of parents' fraudulent acts to their children—but did not specifically address whether Section 1252(a)(2)(D) provides jurisdiction over that claim. 451 F.3d at 405-410.

(Section 1229b).[7] Petitioner did not contend, however, that the Board used the wrong legal standard in this case. Petitioner also cites decisions in which courts found legal error because the IJ wholly failed to consider relevant evidence,[8] or the Board used a legal standard that was clearly inconsistent with its prior precedent.[9] But again, petitioner does not contend that the Board completely failed to consider relevant evidence or ignored any of its own precedent regarding the substantive requirements for proving the necessary hardship; he simply disagrees with the Board's conclusion that he failed to establish such hardship on this record.

Here, the court of appeals acknowledged that it retained jurisdiction under 8 U.S.C 1252(a)(2)(D) to review legal questions even if they relate to a cancellation-of-removal determination. Pet. App. 3a. But it concluded that the issue petitioner raised was not a question of law or a constitutional claim. The fact that some courts of appeals have found different claims to be judicially reviewable does not mean there is any disagreement in the circuits relevant here.

3. This case would in any event provide a poor vehicle to resolve the question petitioner seeks to have this Court review. Even if the court of appeals had jurisdiction to consider petitioner's challenge to the Board's hardship determination, that claim would fail, and even if petitioner demonstrated the requisite hardship, he would be ineligible for cancellation of removal because

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[7] See *Gomez-Perez* v. *Holder*, 569 F.3d 370, 371 (8th Cir. 2009); *Figueroa* v. *Mukasey*, 543 F.3d 487, 491-493 (9th Cir. 2008); *Mireles* v. *Gonzales*, 433 F.3d 965, 969 (7th Cir. 2006).

[8] *Mendez* v. *Holder*, 566 F 3d 316, 322-323 (2d Cir. 2009)

[9] *Aburto-Rocha*, 535 F 3d at 503-505.

he cannot show the requisite good moral character and would be denied cancellation of removal as a matter of discretion.

First, even if the court had jurisdiction to consider petitioner's claim, it would not overturn the Board's determination that petitioner failed to show the requisite hardship. Whether an alien has shown "exceptional and extremely unusual hardship to [his United States citizen or lawful permanent resident] spouse, parent, or child" (8 U.S.C. 1229b(b)(1)(D)) is a discretionary determination, and the IJ's underlying factual findings would be "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. 1252(b)(4)(B). Here, the IJ found that petitioner's wife owns a successful business, is financially independent, is able to continue managing her business without petitioner's assistance, and owns her own home. Pet. App. 26a-28a. The IJ also found that petitioner's wife, despite past health problems, is now in good health and only requires routine check-ups. *Id.* at 27a-28a. The IJ acknowledged that petitioner's removal would upset his wife and stepson, but the IJ concluded that "any hardship is limited to the normal emotional hardship involved with separation from a spouse." *Id.* at 28a. As petitioner himself acknowledged (Pet. 8), he cannot prevail on his claim of "exceptional and extremely unusual hardship" unless he shows the hardship to his qualifying relatives would be "substantially beyond the ordinary hardship that would be expected when a close family member leaves this country." *In re Monreal*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001) (internal quotation marks omitted). He has not made any such showing. See Pet. App. 7a-8a.

Even if petitioner had shown the requisite hardship, he likely would be ineligible for cancellation of removal

because he cannot show the requisite "good moral character," 8 U.S.C. 1229b(b)(1)(B). Although the IJ did not make a finding on good moral character, he expressed significant doubts about whether that standard could be met. Based on petitioner's conflicting testimony at his hearing (which led the IJ to make an adverse credibility finding, *id.* at 28a-29a) and petitioner's criminal record (which includes not only convictions for selling prescription drugs but also illegally bringing his children to this country, failing to file tax returns, and driving without a license, *id.* at 17a, 24a-25a), the IJ stated that he "ha[d] a lot of concerns about [petitioner's] testimony, and his disregard for the laws of this country." *Id.* at 25a. In light of all of these negative factors, petitioner likely could not demonstrate the requisite good moral character.

For many of the same reasons, even if petitioner were statutorily eligible for cancellation of removal, he likely would be denied that relief as a matter of discretion. Indeed, the IJ already considered the issue of whether to grant petitioner cancellation if petitioner were eligible and decided that such discretionary relief was not justified because petitioner's negative factors outweighed his positive equities. In particular, the IJ noted that petitioner's testimony was not truthful, Pet. App. 28a-29a; that petitioner's criminal convictions for illegal sale of prescription drugs "show[] his disregard for the laws of this country," *id.* at 29a-30a; that petitioner's decision to bring his Mexican children to live with him in Florida for several months illegally also showed a disrespect for United States law, *ibid.*; and that petitioner "owns no property" in the United States, "his employment is spotty, and he has done nothing to support the community," *id.* at 30a. Accordingly, in ad-

dition to the other reasons why review of the unpublished decision below is unwarranted, petitioner likely could not obtain cancellation of removal no matter how this Court resolved the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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